STATE OF WISCONSIN CIRCUIT COURT EAU CLAIRE COUNTY
Branch 3

NORTHERN STATES POWER COMPANY,

Plaintiff,

vs. Case No. 03CV753

ADMIRAL INSURANCE COMPANY, et al.

Defendants.

SCHEDULING ORDER

This action was commenced by the filing of a Summons and Complaint on November 12, 2003. Hearings were held in this matter in open Court and on the record on February 11,2004, May 27, 2004, September 23, 2004 and May 2, 2005. The attorneys who appeared for the various parties were noted on the record during each hearing. To some extent, during each of these hearings, the matter of scheduling was addressed. After considering the advice and counsel of the attorneys,

IT IS HEREBY ORDERED:

1. Plaintiff shall disclose experts, each with a meaningful written report, by June 3, 2005. The experts shall be fully identified with the location and address of their office or place of work.

2. On or before September 7, 2005, the plaintiff and the defendants shall file and exchange rough draft proposed special verdict forms and jury instructions. The plaintiff shall submit its own separate proposed verdict and jury instructions. The defendants, as a group or individually, shall submit their proposed special verdict and jury instructions. The purpose of filing these rough drafts is to acquaint the Court with potential issues of fact that will need to be

decided at trial. The requested jury instructions shall not include any "boiler plate" instructions. Only substantive instructions or special instructions drafted to address disputed issues of fact in this case need be submitted.

3. Plaintiff will disclose lay witnesses on or before September 9, 2005. The lay witnesses shall be fully identified with the location and address of their home and office or place of work.

4. There will be an "on the record" status conference on September 12, 2005 at 1:30 p.m. Two hours have been set aside for the status conference. Counsel for the parties must appear in person in the Branch 3 Circuit Courtroom for the status conference. Among other things, counsel should be prepared to discuss:

a. A voluntary exchange of all damage information if such information has not already been exchanged.

b. An orderly presentation of insurance policies as to those policies that are not in dispute.

c. Details surrounding the official "Court Record" at trial. It may be necessary for the parties to consider hiring their own court reporters.

d. Counsel's opinions respecting jury selection and management, including, but not limited to, the size of the proposed pool, the number of alternate jurors to be selected, the advisability of sending out a lengthy jury questionnaire in advance of voir dire, etc.

5. Defendants shall disclose experts, by November 1, 2005. The experts shall be fully identified with the location and address of their office or place of work.

6. Defendants will disclose lay witnesses on or before December 21, 2005. The lay witnesses shall be fully identified with the location and address of their home and office or place of work.

7. Defendants shall provide a meaningful written report for each of their experts on or before January 2, 2006.

8. Plaintiff shall disclose rebuttal experts, if any, on or before March 3, 2006.

9. All discovery of and relating to lay witnesses shall be completed on or before March 31, 2006.

10. All interrogatories and requests for production of documents and things and all requests for entry upon land for inspection shall be served on or before March 31, 2006.

11. Plaintiff shall provide a meaningful written report for each of its rebuttal experts on or before March 31, 2006.

12. Discovery of all experts shall be completed on or before July 31, 2006.

13. On or before August 31, 2006, the parties shall again file and exchange draft proposed special verdict forms and jury instructions. See the requirements of paragraph 3 hereinabove. The purpose of filing a second set of drafts is to update the Court with respect to potential issues of fact that may have resolved or arisen since September 7, 2005.

14. All summary judgment motions shall be filed and served on or before August 31, 2006. Responses to summary judgment motions shall be filed and served by October 10, 2006. Replies to responses to summary judgment motions shall be filed and served on or before October 31, 2006.

15. There will be a hearing on the parties' respective motions for summary judgment on November 13 and 14, 2006 commencing at 9:00 a.m. Only those parties advancing or

defending against summary judgment motions need be present in the courtroom. No appearances by telephone will be permitted. For the reasons expressed on the record on September 23, 2004 (see pages 25 and 26 of the transcript attached hereto as Exhibit A), it is unlikely any motions for summary judgment will be granted in advance of trial.

16. All discovery shall be completed on or before December 1, 2006. For "discovery to be completed," all motions compelling discovery must be filed, served and heard on or before December 1, 2006. Motions involving discovery disputes and disputes that are not heard before December 1, 2006, will be denied. It is incumbent upon the parties seeking to compel discovery to get a motion date from the Court's judicial assistant.

17. On or before December 1, 2006, all parties shall mutually file and exchange a detailed list of all exhibits that the parties intend to offer at the trial of this matter. Each exhibit intended to be offered by each party shall be clearly and unambiguously separately identified. No exhibit numbers shall be assigned to any of the individual exhibits. Each parties' exhibit list shall clearly articulate the party to whom the list belongs. Failure of any party to file and exchange the list of exhibits described in this paragraph may result in that party being prohibited from introducing any exhibits.

18. On or before December 1, 2006, the parties shall mutually file and exchange any and all motions in limine, together with supporting papers as well as any motions requesting rulings upon objections for intended deposition or videotape deposition testimony to be played at trial. Any party objecting to deposition testimony or videotape deposition testimony shall supply the Court with a complete transcript of the deposition involved as a well as a summary face sheet outlining the page and line number of each objection that party wants preserved. Failure to file written objections as described in this paragraph constitutes a waiver of all objections in the

entire deposition. This paragraph does not apply to the use of deposition testimony offered for impeachment only.

19. On or before December 1, 2006, the parties will mutually file and exchange their final proposed jury instructions, special verdict forms, special voir dire questions, if any, together with any and all pretrial motions and trial briefs, if any.

20. There will be a final pretrial conference held on December 11 and 12, 2006 commencing at 9:00 a.m. Each party must be represented by the attorney who plans to try the case for that particular party. No telephone appearances will be allowed. A more detailed schedule for the final pretrial conference will be issued by the Court as the pretrial date approaches.

21. A twelve-person jury trial will commence on Monday, January 22, 2007. Selection of the jury will commence at 9:30 a.m. The trial will conclude no later than April 12, 2007.

22. Any accommodation agreements between the parties altering any of the times or deadlines as set forth in this order will not be honored by the Court. Accommodation agreements between the parties altering any of the terms of this scheduling order are void and not binding on the Court.

23. Any witnesses (including expert witnesses), who do not personally appear at the trial, will have their testimony presented by deposition or videotape deposition. The trial will not be postponed or delayed to accommodate unavailable witnesses.

24. For the reasons expressed on the record on September 23, 2004 (see pages 32-37 of the transcript attached hereto as Exhibit A), there will be no adjournments of this case for any reason.

25. The Court's Administrative Order of March 2, 2004 is, in part, adopted by reference. The following paragraphs from the Administrative Order of March 2, 2004 shall be deemed a part of this Scheduling Order: Paragraphs 1, 2, 3, 4, 5, 6, 7 and 8.

26. Exhibit B, attached hereto, "Presentation Of Evidence At Trial," is incorporated herein by reference.

27. Exhibit C, attached hereto, "Case Management Order," is incorporated herein by reference.

28. NONCOMPLIANCE WITH THE EXACT TERMS OF THIS ORDER MAY BE DEEMED TO CONSTITUTE BAD FAITH. FAILURE TO COMPLY STRICTLY WITH THE TERMS OF THIS SCHEDULING ORDER MAY RESULT IN SANCTIONS, INCLUDING, BUT NOT LIMITED TO: COMPENSATORY AND NON-COMPENSATORY FINES, DISMISSAL, DEFAULT JUDGMENT, REFUSAL TO LET WITNESSES TESTIFY, REFUSAL TO ADMIT EXHIBITS, CONTEMPT OF COURT, THE ASSESSMENT OF SPECIAL COSTS AND EXPENSES AND/OR THE IMPOSITION OF ACTUAL ATTORNEY'S FEES AND COSTS. SEE ALSO §802.10(7) AND §804.12(2) AND HUR V. HOLLER, (CT. APP. 1996) 206 WIS.2D 335, 343, 344, 557 N.W.2D 429.

Dated this 26 day of May, 2005.

BY THE COURT:

William M. Gabler, Sr.
Circuit Court Judge, Branch 3

cc Counsel of record

STATE OF WISCONSIN CIRCUIT COURT EAU CLAIRE COUNTY
BRANCH 3

- -

NORTHERN STATES POWER COMPANY,

Plaintiff,

-vs-

HEARING
Case No. 03CV753

ADMIRAL INSURANCE COMPANY, et al.,

Defendants.

- -

The above-entitled matter coming on to be heard before the Honorable William M. Gabler, judge of the above-named court, on the 23rd of September, 2004, commencing at approximately 2:36 p.m., in the courthouse in the City of Eau Claire, County of Eau Claire, State of Wisconsin.

- -

APPEARANCES

ON BEHALF OF THE PLAINTIFF:

Raymond R. Krueger
Kristina M. Bourget

ON BEHALF OF THE DEFENDANTS:

Amy J. Woodworth
Robert F. Walsh
Michael J. Cohen
Paul J. Pytlik
Patrick R. Burns
David Cassidy
John M. Anderson
Colby B. Lund
Frederick W. Stein

EXHIBIT A

APPEARANCES
CONTINUED

ON BEHALF OF THE DEFENDANTS:

Stephanie L. Finn
James S. Stickles, Jr.
Brian M. Remington
Ellen L. Green
Cynthia K. Thurston
Robert L. McCollum
Peter J. Manderfeld
Donna J. Vobornik
Patrick T. Walsh
Christopher J. Johnson
Mark S. Nelson
Dana J. Wachs
S. William Grimes
Roy S. Wilcox
Kenneth W. Dodge

THE COURT: As long as we're talking about summary judgment, let me bring that up. I understand the purpose for summary judgment. It's to limit the issues, not try things that aren't disputed or aren't reasonably disputed. But I guess what I have to do is I have to weigh the risks involved in granting summary judgment. There are risks to the litigants. And by that I mean, if I would happen to be wrong, I would happen to be misled, there's risk to the litigants, because litigants are going to be spending more time and more money doing things that they otherwise wouldn't have had to have done. There is a risk to the appellate court if I would deny a motion for summary judgment that's not going to be

appealable. But if I would grant one and let somebody go, then I've created a final order from which somebody would have to appeal. And then we're going to be fragmenting this case. And I think I have a duty to the appellate court insofar as possible to hand them this case in as manageable and in as organized a fashion as possible. And although that may mean some inconvenience or added expense to one or more parties, I'm not sure that justice is served by deciding insurance coverage summary judgment motions in this case on a trial before the merits since this is a -- this is a first-party claim. So that is my thought process, that, yes, this runs contrary to the normal course of doing things, but when this goes up on appeal, I want everybody to be in it at once. So could you -- Anybody care to address that? Am I missing something? And don't be shy.

THE COURT: We're back on the record. We've had some discussion about the terms of the case management and scheduling order. There are some amendments and changes that are going to be made to that, some additions.

But with respect to the scheduling order and also the further handling of this case, although I don't want to be a soliloquist, this point starting right now on the record is going to be appended to the case management order, because right now I'm exercising my discretion on the subjects that may come up later.

As you may know, I may have expressed this before, this is a five-judge county. We rotate cases on an intake schedule. That means that a judge is on intake for three weeks and off intake for 12 weeks. During the time that a judge is on intake for three weeks, he or she takes in all new criminal cases and other things. That's why it's called intake. On the 12 weeks off, you work off that which you take in on intake. It was for that reason in February of this year I scheduled this trial for three months, those three months between my two intake schedules.

We have, as I say, five judges in this county. According to the latest CCAP weighted case average, we have a need for 6.92 judges in Eau Claire County. We're almost two judges short. In this day and age, there's no money for reserve judges. We can't get reserve judges. Who knows what the economy will be in the year 2007.

Case loads of this branch and other branches cannot be impinged upon to accommodate a trial longer than three months. There simply are not the judicial resources available. If we have a case that lasts anywhere near three months, I'm going to have to make arrangements with the chief judge and with the district court administrator to engage in a wide

variety of practices that are going to disrupt the judicial machinery, not only in Eau Claire County, but in the entire district. We're going to have to rotate court reporters in Eau Claire and probably throughout the district.

The cost to Eau Claire County for a three-month jury trial is going to be immense. Already our clerk's office is two clerks short of the staff we need. We don't have clerks from the clerk's office serve as jury bailiffs or jury clerks. We hire them out. We pay our jurors money, as all counties do. We provide lunch to our juries, as many counties do.

At my request, the clerk calculated that the cost of just the jury for a three-month trial in Eau Claire would be in excess of $40,000.

In calendar year 2003, we had 94 days of jury trials. In calendar year 2004 thus far, we've had 72. We may get at or near 90 for this year.

If we have a three-month jury trial in calendar year 2007, we will more than double the number of jury days and hence more than double the amount of our budget for this single trial.

We will have extreme difficulty finding 12 jurors and four alternates that are going to be able

to sit for three months.

For these reasons, I gave you two years to prepare when we set the date in February -- or rather May of this year.

Because of these constraints and because I have to be a good steward of, not only the state's judicial resources, and also I have to be a good steward of the county's budget, because this is going to have a profound affect upon the county's budget, this case cannot and will not be adjourned for any reason. There will be simply no adjournments. Even if I die, there will be no adjournments, because if I die, the district court administrator is going to be able to hire a reserve judge cheaper than a judge's salary. Believe me, I will make arrangements for that.

In addition to that, I'm telling you this now, because I am speaking, not to you, I'm speaking to the Court of Appeals, there will be no adjournments, and you have to understand that. If I were you, I don't know what kind of firm structures you have, some firms are run by dictatorships, some firms are run by oligarchies, some firms are run by democratic committees, please go back and tell your dictators, your oligarchs, your people on your management

committee that you must have at least two people that are fully and completely able to try this case.

If the night before the trial begins one of you comes down with malaria and cannot make the trial, the case will go on. If driving up the day before the trial one of you is involved in a car accident and breaks your leg and is in the hospital, the case will go on.

There is no circumstance short of a complete shutdown of the judicial branch of government that this case is going to be adjourned.

I know that sounds unusual and perhaps harsh, but these are unusual times. We simply do not have the resources to be rescheduling a case of this type.

I mentioned earlier about the length of the trial. This case is going to certainly be no longer than three months. It's likely to be shorter, because there will come a point in time when we will have more of a planning conference.

I plan to make extensive use of Wisconsin Statute Section 904.03 and Section 906.11.

Section 904.03 talks about the exclusion of relevant evidence on the grounds of prejudice, confusion or waste of time. I can limit relevant evidence if it's substantially outweighed by

considerations of undue delay or what might be needless presentation of cumulative evidence, depending upon the type of case. Undue delay in one case may not be undue delay in another. Cumulative evidence in one case might not be cumulative evidence in another. But I will sua sponte use that statute to keep the case going.

Furthermore, 906.11 talks about the control and mode of interrogation of witnesses to ascertain the truth and to avoid the needless consumption of time. I will sua sponte use that, as well.

If this case goes to trial, this is going to be a trial that none of us have ever experienced before.

For example, with experts, I'm thinking, just as an example, your experts will probably not be able to give their qualifications. I will probably read a summary of their qualifications. Their testimony will consist of them starting out giving their opinions and then giving their reasons for their opinions, and that will be it. We'll see how this goes. We'll see how many witnesses we have.

So for all of those reasons, there will be no adjournments.

Thank you.

We're off the record.

STATE OF WISCONSIN)
) ss
COUNTY OF EAU CLAIRE)

I, Jill M. McLaughlin, Official Circuit Court Reporter for Eau Claire County, State of Wisconsin, do hereby certify that the above and foregoing is a true and correct transcript of the proceedings in the foregoing matter, held on the 23rd day of September, 2004, as contained in my Stenograph shorthand notes, and all matters pertaining thereto, to the best of my ability.

Dated: October 7, 2004.

Jill M. McLaughlin, RMR

PRESENTATION OF EVIDENCE AT TRIAL

For the reasons described on pages 32-37 of Exhibit A, §904.03 and §906.11 Wis. Stats. will be liberally used and applied to insure that the trial of this matter will be fair, yet efficient. To that end, the presentation of evidence during the trial will be affected as follows:

1. **Expert Witnesses**

a. Expert witnesses will take the witness stand and be introduced by the Court. A one-page summary of the experts' qualifications will be read to the jury by the Court. A copy of that narrative summary will be provided to each juror. No questions respecting the experts' qualifications may be asked by the party offering that expert witness.

b. Following the introduction of the expert witness to the jury, the expert will give a narrative summary of everything the expert witness did to prepare to testify. For example, the witness will explain to the jury what testing, inspections, research, etc. that particular expert has engaged in.

c. Following the witnesses' narrative summary of all of the work he/she has done, the witness will provide to the Court and to each member of the jury a typed, numbered, written list of all of the opinions that particular expert witness holds. The expert will read his/her opinions to the jury.

d. Following a reading of the expert's opinions, the party offering the witness may then begin asking questions asking the expert to explain why he/she holds the opinions just presented to the jury. If necessary, further details of the expert's pre-testimonial work may be explained to the jury in support of the opinions offered.

e. If, during the final pre-trial conference of December 11 and 12, 2006, it appears there are legitimate foundation objections to be interposed to a particular expert's opinions, then paragraph c hereinabove may be altered to require the offering party to establish a sufficient foundation before opinions are disclosed to the jury.

f. On cross-examination, the expert's qualifications may be fully explored. On redirect examination, if necessary, the party offering the expert may ask questions of the expert in support of his/her qualifications.

2. **Lay Witnesses**

a. Lay witnesses will be introduced by the Court. A party offering a lay witness shall provide the Court and each of the jurors with a one-page narrative summary of the proposed areas and subjects of the witnesses' testimony. That summary will be read to the jury by the Court.

b. On cross-examination, the subjects of the witnesses' testimony are not foreclosed or otherwise limited by the written summary of the witnesses' direct examination testimony.

3. **Trial Exhibits**

a. Before the presentation of any evidence, each party will supply the Court and each member of the jury with a list of all exhibits that party might possibly introduce into evidence. This list shall be the same list described in paragraph 17 of the Scheduling Order to which this exhibit is attached.

b. Each party's exhibit list shall be arranged so that the Court and members of the jury can manually insert exhibit numbers opposite a particular exhibit. The exhibit sheet

shall also provide a section where the Court and the jury can keep track of whether an exhibit is offered and then received.

4. **Demonstrative Evidence**

a. Insofar as practicable, the parties are encouraged to present documentary and pictorial evidence so the jury and the Court can view the evidence along with the witness.

b. The retractable screen located to the left of the witness stand at the front of the courtroom is the only surface upon which images will be projected.

c. The parties are encouraged to either rent Eau Claire County's "ELMO" and power point projector; or, in the alternative, one or more of the parties may agree among themselves to provide their own "ELMO," "DOAR", or other projecting device during the trial.

d. Whatever equipment the parties decide to use will be the equipment that all parties must use. In other words, each party need not provide its own audiovisual equipment. Projecting equipment, however described, will be considered "community property" during the trial.

William M. Gabler Jr.
5-26-05

CASE MANAGEMENT ORDER

I. DEFINITIONS

1. "Northern States Power Company" or "Plaintiff" means Northern States Power Company, a Wisconsin corporation.

2. "Insurer," "Insurers," "Defendant," or "Defendants" means the Defendants in this action, either singly or as a whole.

3. "Parties" means Plaintiff and all of the Defendants in this action, and "Party" means Plaintiff or any one of the Defendants.

4. "Minnesota Action" means the lawsuit captioned *St. Paul Mercury Insurance Company, et al. v. Northern States Power Company, d/b/a Xcel Energy, Inc., et al.,* Case No.: CT 03-017809, State of Minnesota, District Court, County of Hennepin, Fourth Judicial District.

II. COORDINATION AMONG COUNSEL

A. Master Service List

As an administrative accommodation for the convenience of the Court and the Parties, the law firm Meissner Tierney Fisher & Nichols S.C. shall maintain in its office a Master Service List of all counsel of record. Each Party shall be responsible for notifying Meissner Tierney Fisher & Nichols S.C. of all or any changes to the Master Service List. When any changes are made, Meissner Tierney Fisher & Nichols S.C. shall serve on all Parties a copy of the Amended Master Service List.

B. Liaison Counsel With Court

For the convenience of the Court, Cynthia Smith of Michael Best & Friedrich LLP,

Phone: (414) 225-2766, on behalf of Plaintiff, and Michael J. Cohen of Meissner Tierney Fisher& Nichols S.C., Phone: (414) 273-1300, on behalf of the Defendants, are appointed as liaison counsel, and are appointed to receive communications from the Court on behalf of the Parties for whom they are liaison counsel. It is the responsibility of liaison counsel to promptly forward or inform the Party(ies) for whom they are liaison counsel of such communications from the Court. Liaison counsel are appointed for the convenience of the Court and shall not have the authority to bind any Party to any procedural or substantive legal position in this action. Designation of the Defendants' liaison counsel may be changed from time-to-time by the Defendants, upon notice of the change to the Court and all Parties.

C. **Avoidance of Duplication**

Plaintiff's counsel and Defendants' counsel shall use their best efforts to avoid or minimize duplicative motions, briefs, depositions, deposition questioning, and discovery to the extent consistent with each Party's individual interests. Subject to the provisions of this CMO, nothing herein shall be construed to limit the right of each Defendant to conduct such discovery as it deems necessary or to separately brief and argue any motion. Similarly, if one Defendant is taking the deposition of a witness, all other Defendants should use their best efforts to ensure that duplicative questioning does not result.

Without waiving any of the Defendants' arguments regarding the appropriateness of the venue of this Court, in an effort to avoid duplication of discovery in this case and in the Minnesota Action, any discovery obtained in this action may be used in the Minnesota Action and any discovery obtained in the Minnesota Action may be used in this action subject to and in accordance with the Wisconsin Civil Rules and Minnesota Rules of Civil Procedure and any applicable Local Rules of this Court and the Minnesota Court, and any order of this Court and

the Minnesota Court. The above provision does not apply to use of discovery obtained by any Party by virtue of a discovery order (by motion to compel or motion for protective order) entered in either this action or the Minnesota Action.

D. Joint Defense Privilege and Cooperation Among Defendants

Recognizing that it is proper and necessary in cases such as this action for the Defendants to coordinate in defense of the claims by Plaintiff and in the conduct of this action to the extent possible, such joint or cooperative undertakings shall not constitute evidence of conspiracy, concerted action, or any other wrongful conduct. Communications and information-sharing among the Defendants' counsel in connection with joint efforts and joint meetings in this litigation shall be protected by and shall not constitute a waiver of attorney-client, work product, trade secret, or other applicable privilege or protection. Communications between any counsel for the Defendants and a jointly-retained expert or consultant shall be treated as communications between experts or consultants and one Party, with all of the privileges and protections that exist under applicable case and statutory law.

Cooperative efforts among Defendants' counsel for the purpose of proceeding in this action shall not be discoverable and shall not be communicated to the trier of fact. If a Defendant withdraws from any cooperative efforts, or if a Defendant is dismissed from this action, by settlement or otherwise, communications between that Defendant and other Defendants and work product shared by or with the withdrawing or dismissed Defendant with respect to this action, prior to its withdrawal or dismissal, will not be deemed to have lost the protection of the joint defense, attorney-client, work product or other applicable privilege or protection.

III. FILING AND SERVICE OF PAPERS

A. Filings

Pleadings and other papers shall be filed in accordance with Paragraphs 4, 5, 6, 7 and 8 of the Court's Administrative Order of March 2, 2004, the Wisconsin Civil Rules and the Local Rules.

B. Service

Subject to Sections III.C, below, one copy of each pleading and filing with the Court shall be served on an attorney of each law firm address on the Master Service List in accordance with §801.14, Wis. Stats. If an attorney represents multiple parties, only one copy of the pleading or filing need be served on that attorney. Service of papers requiring a response in seven (7) business days or less, or relating to a hearing which has been set within seven (7) business days or less shall be served by hand-delivery, next-business day delivery or facsimile. For purposes of economy, it shall be sufficient certification of service to state that service was made, by the delivery method specified, on all counsel identified on the current Master Service List. The Master Service List may be incorporated by reference with express reference to the revised date thereof and need not be attached to the Certificate of Service.

C. Non-Dispositive Motions

Unless otherwise ordered by the Court, or as set forth in the Scheduling Order, for all motions except motions for summary judgment, the schedule for filing and serving papers shall be as follows:

Joinders:	Seven (7) calendar days after motion papers are filed and served
Responses:	Thirty (30) calendar days after motion papers are filed and served
Replies:	Fifteen (15) calendar days after Responses are filed and served

Hearing Date: As scheduled by the Court, but no sooner than thirty (30) calendar days after motion papers are filed and served.

Nothing in this section shall preclude any party from seeking leave of Court for an expedited hearing and/or briefing process for good cause.

D. Uniformity of Service

To achieve uniformity in establishing the date of service, pleadings, motions and briefs ("papers") shall be deemed served upon all counsel on the Master Service List on the date such papers are mailed, hand-delivered, or provided to a delivery service for next-business day delivery to counsel on the Master Service List. If service is effected by facsimile, service shall be deemed made on the date of the facsimile transmission if the facsimile transmission is completed before 5 p.m. Central Time. An electronic copy of each paper (excluding exhibits or non-Wisconsin authorities) shall also be served on all counsel on the Master Service List via email on the same date that such paper is filed or served.

IV. DISCOVERY

All discovery shall be conducted in accordance with the Wisconsin Civil Rules and the Local Rules, unless specifically stated otherwise in this CMO. The Court expects the Parties to cooperate in all discovery matters to the maximum extent possible. The Parties shall use their best efforts to avoid duplicating discovery requests in this case and the Minnesota Action. Any Party can respond to duplicative discovery by referencing a specific response it has made to previously filed discovery.

A. Fact Discovery

1. Document Requests

A Party who produces documents for inspection shall produce them as they are kept in the usual course of business at the time of the request or, at the option of the producing party, shall organize them to correspond with the categories in the request. To distinguish effectively among the documents copied or designated for copying by the Parties, each page of each document produced by any Party shall bear a unique document identification number, with a unique prefix or other mark that clearly identifies the Party producing the document ("Bates Stamp"). It is the responsibility of the Party who requested production from a non-party to ensure that the documents being produced are marked with a Bates Stamp. Where a part of a page is redacted, the fact and length of the redaction shall be made clear on the face of the document. Production of documents shall take place at the office of the counsel for the producing party or other location where the documents are maintained in the usual course of business, unless other arrangements are agreed upon.

Documents may be produced in hard copy or in electronic format on CD-Roms using a generally-available format subject to the prior consent of the inspecting Party. To the extent an inspecting Party designates documents produced for copying, copying charges shall be limited to the producing Party's actual copying costs, and in any event shall not exceed $0.25 per page for standard-size documents.

Unless otherwise agreed to, within sixty (60) days of the date the document request is served, the producing Party shall serve a privilege log which identifies each privileged document withheld from production, by its document numbers, type of document, date, author, addressees, recipients of copies, the positions of the author, addressees, and recipients at the time of the date of the document (to the extent possible), the subject matter of the document, and the legal basis for withholding or redacting the document. The same information shall be provided for each

enclosure to each listed document if the enclosure also is withheld from production, or its document number if it is not withheld from production. With respect to email messages that are withheld from production, the privilege log shall include the foregoing information for each individual email message that is withheld, even if multiple email messages are printed on a single page.

The preceding provisions do not apply to any privileged document, communication or other material created after the commencement of this action by, to, between or on behalf of any of the Parties or their representatives or counsel, to any communications among counsel for the Defendants relating to joint defense efforts after the commencement of this action, or to written communications specifically directed to or by outside legal counsel to or from that counsel's client concerning the subject of insurance coverage for the claims at issue under the policies at issue in this action.

If a producing Party inadvertently produces information, documents, objects or things that it considers to be, in whole or in part, privileged or protected material, it may retrieve such information or materials or parts thereof only as follows:

Within fourteen (14) days (i) after the discovery of the inadvertent production or (ii) after a document has been marked at a deposition or attached to a motion, but in any event no more than one hundred twenty (120) days after production and no less than ninety (90) days before trial, the Party claiming an inadvertent production shall give written notice to all other Parties that the Party claims such information or material to be, in whole or in part, privileged or protected and shall state the nature of the privilege or protection.

Upon receipt of such notice, all Parties who have received copies of the produced information or material shall within thirty (30) days (i) return it to the producing Party and

certify in writing to the producing Party that all copies thereof in their possession have been returned or (ii) object in writing to the assertion of privilege. Upon receipt of a written objection, it shall be the burden of the Party asserting that privileged material has been inadvertently produced to promptly move for an Order compelling the return of the material and any information based thereon. In the event that only parts of a document produced are claimed to be privileged or protected, the Party asserting inadvertent production shall tender redacted copies of such document, removing the parts thereof claimed to be privileged or protected, with the written notice to all other Parties requesting the return of the inadvertently produced information or material.

2. Depositions

a. General

The Parties will use their best efforts to schedule depositions by agreement. All depositions shall be taken pursuant to notice, and such notice shall be served on all Parties at least fifteen (15) days before the deposition is scheduled to commence.

b. Non-Party Depositions

Counsel shall attempt to resolve with any non-party deponent the production of any documents being subpoenaed. All counsel shall have the right to inspect and copy at each inspecting Party's expense whatever documents are produced by a non-party in response to a subpoena. Each party shall use its best efforts to make present and former officers and employees available for depositions upon notice of deposition without the need to serve a subpoena.

c. Use of Documents

To the extent practical, all Parties intending to question a witness at a deposition with respect to any documents shall provide copies of such documents for each of the other Parties in attendance at the deposition. When applicable, the copies of such documents used at a deposition shall bear the appropriate document identification numbers. Exhibits should be identified by the name of the witness and will be numbered consecutively. The court reporting firm mutually agreed upon by the Parties shall maintain a master list of all deposition exhibits and copies of the exhibits on CD-Roms and such list and CD-Roms shall be made available for inspection by any Party. If, during the course of a deposition, a Party deponent identifies a document (including but not limited to a prior deposition transcript) that the examining Party desires, then the examining Party may request a copy of that document on the record at the deposition, and thereafter confirm by letter the request for the document. This letter shall, for all purposes, be treated as a document request pursuant to §804.09, Wis. Stats., with a written response to the request due thirty (30) days after the date the letter is received by the attorney for such Party deponent, and production of documents to which objection is not made within seven (7) days after service of the response, unless otherwise agreed by the Parties.

d. Attendance and Interrogation

All Parties shall be entitled to be represented at every deposition and to inquire of a deponent through their counsel. In order to facilitate necessary arrangements for attending counsel, not less than two (2) days prior to the commencement date of a deposition, any counsel intending to attend the deposition shall use its best efforts to notify the noticing Party and counsel for the deponent.

e. Time and Location of Deposition

Depositions may be held Monday through Friday, and shall commence no earlier than 9:30 a.m., and conclude no later than 5:00 p.m. local time, unless otherwise agreed between counsel or ordered by the Court. No deposition shall be scheduled for more than three (3) consecutive days absent agreement by the Parties or order of the Court. To save expense and travel time, all sessions of the deposition of a single deponent shall, to the extent consistent with the witnesses' schedule, health and the deposition schedule, and unless otherwise agreed, proceed on successive weekdays and for the full deposition day until completion.

No depositions shall be scheduled on the following dates: court hearing dates; Martin Luther King Jr.'s Birthday; President's Day; Good Friday; Passover (first two days); Memorial Day; Independence Day (including the preceding Monday if it falls on a Tuesday or the following Friday if it falls on a Thursday); Labor Day; Rosh Hashanah (two days); Yom Kippur (two days); Columbus Day; Veterans Day; and Thanksgiving (Wednesday, Thursday and Friday). In addition, no deposition shall be scheduled between December 20 and January 5.

All depositions shall take place at such locations as are permitted by the applicable rules of procedure, or as agreed by the Parties, with primary concern given to the convenience of the witness.

f. <u>Stipulations</u>

Unless otherwise noted on the record, the following stipulations shall apply to all depositions in this action:

i. All objections are reserved except as otherwise provided for in §804.07, Wis. Stats.

ii. An objection by a Defendant shall be deemed to be an objection by all Defendants unless otherwise noted;

iii. Corrections to a deposition shall be listed on an errata sheet which counsel for the deponent or the deponent, if not represented by counsel, shall submit to the court reporter and counsel for all Parties within thirty (30) days of receiving the deposition transcript; and

iv. To the extent practicable, exhibits shall be attached to the original transcript; if the format or bulk of any exhibits makes impracticable its attachment to the transcript, the custody of such original exhibits shall be maintained by the court reporting firm mutually agreed upon by the Parties and shall be available for inspection by any Party.

g. Videotaped Depositions

Prior to the first videotaped deposition being scheduled, the Parties shall meet and confer on appropriate procedures for depositions that are videotaped and/or recorded by instant visual display.

h. Costs

Unless otherwise agreed, the appearance fee of the court reporter, the reporter's traveling costs, and the cost of an original and one copy of a transcript, together with duplicating costs of the original and one set of copies of the exhibits, shall be paid by the Party or Parties noticing the deposition. Other Parties will bear the costs of the copying and delivery of the transcript and exhibits that they have ordered for themselves. Nothing in this Section shall preclude a prevailing Party from later asserting a claim for taxable costs and disbursements pursuant to §814.04 Wis. Stats.

3. Commissions and Letters Rogatory

The Court shall issue one form commission order that shall be applicable to any and all out-of-state depositions taken and subpoena for documents issued in this litigation. A copy of

the commission order shall be attached to all such out-of-state deposition notices and subpoena and to all motions filed in other jurisdictions for the purpose of serving the requisite subpoena. A copy of the commission order will be agreed upon by the Parties and submitted to the Court.

4. Foreign Discovery

Where foreign procedures make discovery difficult, the Parties shall cooperate to acquire information informally. This paragraph does not apply to discovery directed to any Party.

5. Responses to Discovery

Plaintiff shall respond completely to discovery requests or deposition notices served by any single Defendant that apply "globally" to all of the Defendants, even if the requesting or noticing Defendant is no longer a Party to the case.

V. CROSS-CLAIMS

No Defendant shall file, institute or prosecute a cross-claim for indemnity, contribution, subrogation or reimbursement against another Defendant, whether based upon principles of contract law or any other legal theory, at law or in equity, until such time as Plaintiff's claims against the Defendant asserting a cross-claim have been resolved by settlement or by entry of final judgment. Any such cross-claim instituted thereafter may be made in a separate action or by an amendment of the pleadings in this action. Any such cross-claim instituted prior to the date of this CMO shall be and hereby is deemed withdrawn.

Any and all defenses to a cross-claim which are or were viable as of the date of this CMO are specifically preserved; provided, however, that no Defendant to this action will assert any defense based upon or arising from any delay by another Defendant to this action in asserting a cross-claim as a result of the provisions of this CMO, and any contract provision imposing a time limit upon the filing of said cross-claim, any applicable statute of limitation, the doctrine of

laches, or similar defenses based upon a time bar, and any other defense which otherwise would have expired or lapsed after the date of this CMO, is tolled from the date of this CMO until the date that the settlement or final judgment referenced in the preceding paragraph.

VI. HEARINGS AND CONFERENCES WITH THE COURT

The Court shall hold status conferences as it deems appropriate and as requested by any Party. An agenda for the status conference shall be submitted to the Court and shall be sent by facsimile or email to all counsel on the Master Service List no later than five (5) days prior to the scheduled conference. The Parties shall use their best efforts to submit a joint agenda to the Court. If an agreement regarding a joint agenda cannot be reached, separate agendas may be submitted to the Court within the time prescribed above.

VII. ALTERNATIVE DISPUTE RESOLUTION

If the Parties decide to pursue alternative dispute resolution as a means to attempt settlement pursuant to §802.12, Wis. Stats., the Parties shall report back to the Court.

William W Sabler Jr.
5-26-05